

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ANTOLIN ANDREW MARKS,

Plaintiff,

v.

DEENA GEPHARDT, *et al.*,

Defendants.

Case No. C07-5259RJB

ORDER ADOPTING REPORT  
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of U. S. Magistrate Judge J. Kelley Arnold. Dkt. 52. The Court has considered the Report and Recommendation, objections to the Report and Recommendation, if any, and the record.

Plaintiff filed this 42 U.S.C. 1983/Bivens action on May 15, 2007. Dkt. 1. Plaintiff is incarcerated at the Northwest Detention Center ("NDC") and is going through the process of being deported. *Id.* Plaintiff names employees of GEO, a contractor at the NDC, and federal employees as defendants. *Id.* Defendants Charles McBurney, Tony Nicholas, and William McHatton (employees of GEO) were dismissed by stipulation on January 10, 2008. Dkt. 48. The remaining Defendants are Deena Gephardt, Michael Melendez, and Dr. Phillip Farabaugh.

Judge Arnold filed the instant Report and Recommendation on January 24, 2008. Dkt. 52. He recommends that the claims against Defendants Gephardt and Melendez be summarily dismissed. *Id.* Judge Arnold recommends that the claims against Dr. Farabaugh survive. *Id.*

Plaintiff filed a "Motion to the Court" on February 5, 2008. Dkt. 55. Plaintiff argues that the

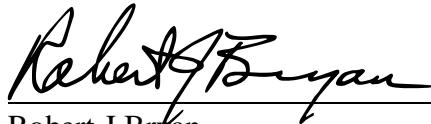
1 Defendants did violate his rights “deliberately and egregiously.” *Id.* He argues that it would be wrong to  
2 “continue this suit against Dr. Farabaugh when he was not solely at fault for the ills that occurred to the  
3 Plaintiff. Therefore, this suit is hereby dismissed against Dr. Farabaugh and against all other parties.” *Id.*  
4 at 3.

5 The Report and Recommendation (Dkt. 52) should be adopted. Plaintiff has failed to carry his  
6 burden under Fed. R. Civ. P. 56 to avoid the summary dismissal, with prejudice, of his claims against  
7 Defendants Gephart and Melendez. Moreover, it appears that he does not oppose dismissal of these  
8 parties. To the extent that Plaintiff now moves for the dismissal of his claims against Dr. Farabaugh, his  
9 motion, (Dkt. 55) and the case should be re-referred to Judge Arnold to determine the application of Fed.  
10 R. Civ. P. 41.

11 Accordingly, it is hereby **ORDERED**:

- 12 • The Report and Recommendation (Dkt. 52) is **ADOPTED**;  
13 • Plaintiff’s Motion to the Court (Dkt. 55) and the case is **RE-REFERRED** to Judge Arnold; and  
14 • The Clerk is directed to send copies of this Order to Plaintiff, all counsel of record, and to the Hon.  
15 J. Kelley Arnold.

16 DATED this 3rd day of March, 2008.

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19 Robert J Bryan  
20 United States District Judge  
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